

SEP 11 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

In the Matter of)

Docket No. 95-118

PMH HEALTH SERVICES
NETWORK,)

ORDER

Respondent.)
_____)

On July 10, 1995, a hearing was held in the above-captioned matter before Administrative Law Judge Lewis D. Kowal. Assistant Attorney General W. Mark Sendrow appeared on behalf of the Arizona Department of Insurance (the "Department") and J. Michael Low and Kathy A. Steadman of Low & Childers, P.C. appeared on behalf of Respondent PMH Health Services Network ("PMH").

PMH and the Department stipulated that the hearing of this matter concerns two issues: 1) whether a health care services organization is considered a life or health insurer within the meaning of A.R.S. §20-485.11(C); and 2) whether PMH holds a direct or indirect ownership interest in a life or health insurer within the meaning of A.R.S. §20-485.11(C).

The record of this matter remained open to allow the parties an opportunity to brief these issues. The deadline for filing responding briefs was August 11, 1995, and the record of this matter closed on that date.

Based upon the entire record in this matter, including all pleadings, motions, testimony and exhibits admitted during the hearing of this matter, Administrative Law Judge Lewis D. Kowal has prepared the following Findings of Fact, Conclusions of Law and Order for consideration and approval by the Director, and

1 based upon these recommendations, the Director makes the
2 following Findings of Fact, Conclusions of Law and enters the
3 following Order:

4 FINDINGS OF FACT

5 1. On February 10, 1995, PMH, an Arizona
6 not-for-profit corporation, filed with the Department an
7 Application for Registration as a Life and Health Administrator
8 (the "Application").

9 2. PMH is part of the PMH healthcare system which
10 consists of five other entities: a) PMH Health Resources, Inc.
11 ("Resources"), b) PMH Health Systems Strategy Group, c) Terraco
12 Properties, Inc., d) Phoenix Memorial Hospital Foundation, and e)
13 PMH Primary Care, Inc.

14 3. Resources, a for-profit Arizona corporation, is
15 the sole statutory member of PMH and of the other corporations
16 comprising the PMH healthcare system within the meaning of A.R.S.
17 §10-1002(20). The term "member" as defined in A.R.S. §10-1002(20)
18 means "any person having membership rights in a corporation in
19 accordance with its articles of incorporation or bylaws."

20 4. Resources is the holding company of the
21 corporations which comprise the PMH healthcare system.

22 5. On April 21, 1995, the Department issued Premier
23 Health Care, Inc. ("Premier") a certificate of authority to
24 transact business as a health care services organization pursuant
25 to A.R.S. §20-1051 et seq. (the "certificate").

26 6. The certificate for Premier was valid and in good
27 standing but subject to renewal as of June 30, 1995.

28 7. Resources holds a twelve and a half percent

1 (12.5%) ownership interest in Premier in the form of stock.

2 8. PMH does not directly own stock in Premier.

3 9. Resources has approval rights over the exercise of
4 certain major actions of the other corporations comprising the
5 PMH healthcare system. Resources also has the right to appoint
6 directors for those corporations.

7 10. The bylaws of Resources require a certain amount
8 of overlap between the board of directors of Resources and the
9 board of directors of the other corporations comprising the PMH
10 healthcare system, including PMH.

11 11. There is one individual who sits on the board of
12 directors of both Resources and Premier.

13 12. There are two individuals who sit on the board of
14 directors of both Resources and PMH.

15 13. On May 25, 1995, the Department denied the
16 Application on the basis of PMH's direct or indirect ownership
17 interest in Premier. The Department found that ownership
18 interest to be a prohibited direct or indirect ownership interest
19 in a life or health insurer within the meaning of A.R.S.
20 §20-485.11(C).

21 14. On May 31, 1995, PMH filed with the Department a
22 Demand for Hearing.

23 15. On June 16, 1995, the Department issued a Notice
24 of Hearing with regard to this matter.

25 16. Premier will offer the following services or
26 benefits to persons in Arizona: hospital care, physician visits,
27 physician services in hospital, x-ray and laboratory services,
28 maternity and pregnancy care, dental care, preventive health

1 care, health education, home health care, mental health care,
2 rehabilitative services, treatment for alcoholism and drug abuse,
3 skilled nursing facility services, ambulance services, emergency
4 room and urgent care services, emergency services outside the
5 service area, prescription drug services, organ and tissue
6 transplants, hemodialysis, medical supplies and prosthetic
7 devices, breast reconstruction and breast prostheses, and blood
8 processing.

9 17. Premier contracts with hospitals and medical
10 professionals to provide health care services to Premier's
11 enrollees. The compensation to the hospitals and medical
12 professionals is on a prepaid capitated basis based upon the
13 number of enrollees assigned to the particular hospital or
14 medical professional. The prepaid capitated fees are paid to the
15 hospitals and medical professionals that contract with Premier
16 regardless of actual usage. In addition to services provided on
17 a prepaid basis, Premier reimburses enrollees for specified
18 emergency and out-of-network services.

19 18. David Bixby, a Phoenix attorney who practices
20 primarily in the field of general corporate law with
21 concentration in health care, was a witness for PMH. Mr. Bixby
22 testified that Resources has the approval rights over the
23 exercise of certain major actions of PMH and that Resources has
24 the right to appoint directors to the board of directors of PMH.
25 According to Mr. Bixby, Resources' significant asset outside the
26 PMH healthcare system is its interest in Premier, and Resources'
27 financial condition is, in part, affected by how well Premier
28 does or will do.

1 19. Nancy Novick, Vice-President of Managed Care for
2 PMH, testified that if the Application was granted, PMH plans to
3 provide the following services to plans as a third party
4 administrator: claims adjudication, utilization management,
5 premium collection and other services typically provided by third
6 party administrators.

7 20. In the event that PMH's application is granted and
8 PMH acts as an administrator for Premier, PMH, through its
9 indirect affiliation with Premier, would have incentive to
10 minimize claims payments or health benefits for Premier's
11 enrollees.

12 CONCLUSIONS OF LAW

13 1. PMH received notice of this proceeding as
14 prescribed by A.R.S. §§20-163 and 41-1061.

15 2. The Director has jurisdiction over this matter
16 pursuant to A.R.S. §§20-161 and 20-485 et seq.

17 3. The Arizona Court of Appeals has identified five
18 elements that constitute an insurance contract: an insurable
19 interest; a risk of loss; an assumption of the risk by the
20 insurer; a general scheme to distribute the loss among the larger
21 group of persons bearing similar risks; and the payment of a
22 premium for the assumption of risk. See Jim Click Ford, Inc. v.
23 City of Tucson, 154 Ariz. 48, 739 P.2d 1365 (App. 1987);
24 Guaranteed Warranty Corp., Inc. v. State ex rel. Humphrey, 23
25 Ariz. App. 327, 533 P.2d 87 (App. 1975).

26 4. Premier's contracts to its enrollees contain the
27 five elements that are necessary to constitute an insurance
28 contract. Those elements are as follows: a) The health of the

1 Premier's enrollees constitutes an insurable interest; b) the
2 risk of loss is the cost incurred by enrollees in receiving
3 health care services; c) Premier assumes that risk of loss; d)
4 Premier's enrollees pay a predetermined fee for coverage of
5 health care services which does not vary with the nature or
6 extent of health care services provided to an enrollee, thereby
7 Premier operates under a general scheme to distribute a loss
8 among a large group of persons (Premier's enrollees) bearing
9 similar risks;¹ and e) the fee which Premier charges its
10 enrollees for health care plan constitutes the charging of a
11 premium within the meaning of A.R.S. §20-1103. Premier's
12 contracts with its enrollees are insurance contracts within the
13 meaning of A.R.S. §20-103(A).

14 5. Insurance contracts are not limited to traditional
15 indemnity contracts, but may include other contracts as well such
16 as service contracts. See Jim Click Ford, Inc., 154 Ariz. at
17 48.

18 6. The term "insurance" is defined as a contract by
19 which one undertakes to indemnify another or to pay a specified
20 amount upon determinable contingencies. A.R.S. §20-103(A).

21 7. A broad definition of the term "indemnify" has
22 been used by the Arizona Court of Appeals to mean "[t]o restore
23 the victim of a loss, in whole or in part, by payment, repair, or
24

25 ¹An enrollee pays Premier a predetermined fee for
26 coverage of health care services in the event that the enrollee
27 needs such services. Premier may never provide any health care
28 services to certain enrollees and may perform minimal or
extensive health care services to other enrollees.

1 replacement. To save harmless; to secure against loss or damage;
2 to give security for the reimbursement of a person in case of an
3 anticipated loss falling upon him (citation omitted)." Jim
4 Click Ford, Inc., 154 Ariz. at 50.

5 8. Premier "indemnifies" its enrollees by holding its
6 enrollees harmless from the costs of health care services in
7 excess of the enrollees' premium and copayment.

8 9. Premier is an "insurer" within the meaning of
9 A.R.S. §20-104 and a "health insurer" within the meaning of
10 A.R.S. §20-485.11(C).

11 10. The terms "direct or indirect ownership" and
12 "owner" are not defined in A.R.S. Title 20, Chapter 2. When the
13 term "owner" is used in statutes, it is to be given wide
14 construction guided in part by the object sought to be
15 accomplished. City of Phoenix v. State of Arizona, 60 Ariz.
16 369, 373, 137, P.2d 783, 786 (1943).

17 11. The conflict of interest provisions of A.R.S.
18 §20-485.11(C) are intended to prevent a situation where the
19 administrator may be economically motivated to prefer the
20 interests of the insurer over the interests of the insureds.

21 12. If the Application is granted and Premier acts as
22 an administrator for Premier, the organizational structure of the
23 PMH healthcare system and Premier creates economic motivation for
24 PMH to prefer the interests of Premier over those of Premier's
25 enrollees. Such a conflict of interest is prohibited by A.R.S.
26 §20-485.11(C).

27 13. PMH has an indirect ownership interest in Premier
28 within the meaning of A.R.S. §20-485.11(C).

1 ORDER

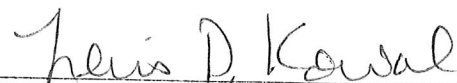
2 IT IS ORDERED:

3 Denying the application for certificate of registration
4 as a Life and Health Administrator submitted by PMH Health
5 Services Network.

6 DATED this 11th day of September, 1995.

7
8 

9 CHRIS HERSTAM
Director of Insurance

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11 

12 LEWIS D. KOWAL
Chief Administrative Law Judge

13
14 NOTIFICATION OF RIGHTS

15 The aggrieved party may request a rehearing with
16 respect to this Order by filing a written petition with the
17 Administrative Law Division within 30 days of the date of this
18 Order, setting forth the basis for such relief pursuant to A.A.C.
19 R20-6-114(B).

20 The final decision of the Director may be appealed to
21 the Superior Court of Maricopa County for judicial review
22 pursuant to A.R.S. §20-166.

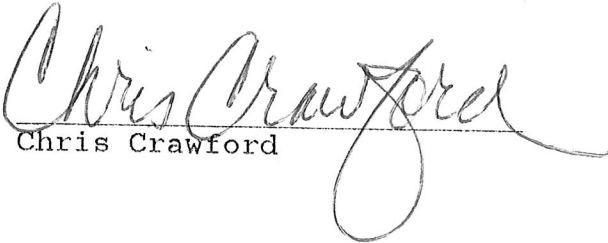
23
24 COPY of the foregoing mailed/delivered
this 11th day of September, 1995, to:

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26 Gregory Y. Harris, Executive Assistant Director
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